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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,048	09/15/2000	Robert S. Behl	16807-002400	3396
23639	7590	08/22/2005	EXAMINER	
BINGHAM, MCCUTCHEN LLP THREE EMBARCADERO CENTER 18 FLOOR SAN FRANCISCO, CA 94111-4067			ROLLINS, ROSILAND STACIE	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/663,048	BEHL ET AL.
	Examiner Rosiland S. Rollins	Art Unit 3739
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --		
Period for Reply		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>30 September 2002</u> .		
2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
Disposition of Claims		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-9, 11-23 and 25-66</u> is/are pending in the application.		
4a) Of the above claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-9, 11-23 and 25-66</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.		
Application Papers		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
Priority under 35 U.S.C. §§ 119 and 120		
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
Attachment(s)		
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____.		

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-23 and 25-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burbank (6312429) in view of Wampler (US 6165175) and further in view of Mahvi (2002/0022864). In figure 11, col. 9 lines 48-50 and col. 11 line 66 – col. 7 line 1, Burbank discloses a probe for deploying electrode arrays. As illustrated below, the probe comprises a shaft, a first array of electrode having a concave face and a second array of electrodes also having a concave face, wherein the concave face of the first and second arrays face each other when the arrays are deployed.

Wampler et al. teach that it is old and well known in the art to construct electrosurgical instruments as bipolar devices by incorporating both the active and return electrodes into the electrosurgical instrument to substantially restrict the flow of current to the tissue that is placed between the electrodes. Wampler et al. also disclose that it is advantageous to use a bipolar device when cutting tissue as is the case with the electrode arrays of Burbank, to ensure that the flow of current is confined to the

tissue in the instrument and to a significantly lesser extent to the tissue adjacent the instrument.

Mahvi teaches in figures 1-5, paragraphs (0009) and (0038)-(0040) that it is known in the art to couple one pole of a RF power supply to a first electrode array (e.g., 22a, (0039)) and another pole of the RF power supply to a second electrode array (e.g., 22b, (0039)) and energizing the power supply to apply electrical current between the first and second array spaced at opposite edges of a tumor (0038)-(0039).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the electrode arrays of Burbank bipolar based on the Wampler et al. teaching that it is advantageous to use a bipolar device when cutting tissue as is the case with the electrode arrays of Burbank, to ensure that the flow of current is confined to the tissue in the instrument and to a significantly lesser extent to the tissue adjacent the instrument. It would have also been obvious based on the Mahvi teaching that the structural bipolar connection of electrode arrays are old and well known in the art.

Regarding the claim limitations directed to the distance and volume between the electrodes, frequency range and the power range, it would have been obvious to one of ordinary skill in the art at the time the invention was made select the dimensions and ranges as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the prior art.

Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-23 and 25-66 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Rosiland S Rollins
Primary Examiner
Art Unit 3739